



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2013-0708, FRL- 9909-47-Region 10]

Approval and Promulgation of Implementation Plans; Idaho:

Infrastructure Requirements for the 2010 Nitrogen Dioxide and 2010 Sulfur Dioxide National
Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to find that the Idaho State Implementation Plan (SIP) meets the infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for nitrogen dioxide (NO₂) on January 22, 2010, and sulfur dioxide (SO₂) on June 2, 2010. Whenever a new or revised NAAQS is promulgated, the CAA requires states to submit a plan for the implementation, maintenance and enforcement of such NAAQS. The plan is required to address basic program elements, including but not limited to regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2013-0708, by any of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- E-mail: R10-Public_Comments@epa.gov
- Mail: Kristin Hall, EPA Region 10, Office of Air, Waste and Toxics (AWT-107), 1200 Sixth Avenue, Suite 900, Seattle WA, 98101
- Hand Delivery/Courier: EPA Region 10 Mailroom, 9th floor, 1200 Sixth Avenue, Suite 900, Seattle WA, 98101. Attention: Kristin Hall, Office of Air, Waste and Toxics, AWT - 107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information

Instructions: Direct your comments to Docket ID No. EPA-R10-OAR-2013-0708. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot

contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle WA, 98101.

FOR FURTHER INFORMATION CONTACT: Kristin Hall at (206) 553-6357, hall.kristin@epa.gov, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, it is intended to refer to the EPA. Information is organized as follows:

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I. Background

The EPA first set standards for NO₂ in 1971, setting both a primary standard (to protect health) and a secondary standard (to protect the public welfare) at 53 parts per billion (53 ppb), averaged annually. The EPA reviewed the standards in 1985 and 1996, deciding to retain the

standards at the conclusion of each review. In 2005, the EPA began another review, resulting in the January 22, 2010, rulemaking to establish an additional primary NO₂ standard at 100 ppb, averaged over one hour (75 FR 6474).

Primary standards for SO₂ were first set in 1971, at 0.14 parts per million (ppm) averaged over a 24-hour period, not to be exceeded more than once per year, and 0.030 ppm, annual arithmetic mean. The EPA subsequently reviewed the primary standards and determined to retain them in 1996 at the conclusion of the review. More recently, on June 2, 2010, the EPA promulgated a revised primary SO₂ standard at 75 ppb, based on a three-year average of the annual 99th percentile of one-hour daily maximum concentrations (75 FR 35520).

The CAA requires that states submit SIPs meeting the requirements of CAA sections 110(a)(1) and (2) within three years after promulgation of a new or revised standard. CAA sections 110(a)(1) and (2) require states to address basic SIP elements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards, the so-called “infrastructure” requirements. To help states, the EPA issued guidance on September 13, 2013, addressing infrastructure SIP elements for certain NAAQS, including the 2010 NO₂ and 2010 SO₂ NAAQS.¹ As noted in the guidance, to the extent an existing SIP already meets the CAA section 110(a)(2) requirements, states may certify that fact via a letter to the EPA.

On September 16, 2013, the State of Idaho submitted certifications to the EPA that the Idaho SIP meets the infrastructure requirements for the 2010 NO₂ and 2010 SO₂ NAAQS. The Idaho Department of Environmental Quality (DEQ) provided notice and an opportunity for public comment on the submittals from July 12, 2013, through August 13, 2013. A notice of

¹ Stephen D. Page, Director, Office of Air Quality Planning and Standards. “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2).” Memorandum to EPA Air Division Directors, Regions 1 – 10, September 13, 2013.

public hearing was published in the *Idaho Statesman* on July 12, 2013. The Idaho DEQ held a public hearing on August 13, 2013 in Boise, Idaho. No comments or testimony were received. The EPA has evaluated the Idaho submittals and determined that the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA have been met.

II. CAA Sections 110(a)(1) and (2) Infrastructure Elements

CAA section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. CAA section 110(a)(2) lists specific elements that states must meet for infrastructure SIP requirements related to a newly established or revised NAAQS. These requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements, with their corresponding CAA subsection, are listed below:

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(D): Interstate transport.
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.

- 110(a)(2)(J): Consultation with government officials; public notification; and Prevention of Significant Deterioration (PSD) and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

The EPA's guidance clarified that two elements identified in CAA section 110(a)(2) are not governed by the three year submission deadline of CAA section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to CAA section 172 and the various pollutant specific subparts 2 – 5 of part D. These requirements are: (i) submissions required by CAA section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA, and (ii) submissions required by CAA section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. As a result, this action does not address infrastructure elements related to CAA section 110(a)(2)(C) with respect to nonattainment new source review (NSR) or CAA section 110(a)(2)(I). Furthermore, the EPA interprets the CAA section 110(a)(2)(J) provision on visibility as not being triggered by a new NAAQS because the visibility requirements in part C, title I of the CAA are not changed by a new NAAQS.

III. EPA Approach to Review of infrastructure SIP Submittals

The EPA is acting upon the SIP submission from Idaho that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2010 NO₂ and 2010 SO₂ NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section

110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions “within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),” and these SIP submissions are to provide for the “implementation, maintenance, and enforcement” of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon the EPA’s taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that “[e]ach such plan” submission must address.

The EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as “infrastructure SIP” submissions. Although the term “infrastructure SIP” does not appear in the CAA, the EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as “nonattainment SIP” or “attainment plan SIP” submissions to address the nonattainment planning requirements of part D of title I of the CAA, “regional haze SIP” submissions required by the EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review permit program submissions to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements

for both authority and substantive program provisions.² The EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, the EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for the EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that “each” SIP submission must meet the list of requirements therein, while the EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the CAA, which specifically address nonattainment SIP requirements.³ Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires the EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.⁴ This

² For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

³ See, e.g., “Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call; Final Rule,” 70 FR 25162, at 25163 – 65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

⁴ The EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for

ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, the EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether the EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit “a plan” to meet these requirements, the EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, the EPA can elect to act on such submissions either individually or in a larger combined action.⁵ Similarly, the EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, the EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.⁶

various pollutants. Note, e.g., that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

⁵ See, e.g., “Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting,” 78 FR 4339 (January 22, 2013) (the EPA’s final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of the EPA’s 2008 PM_{2.5} NSR rule), and “Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 PM_{2.5} NAAQS,” (78 FR 4337) (January 22, 2013) (the EPA’s final action on the infrastructure SIP for the 2006 PM_{2.5} NAAQS).

⁶ On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to the EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). The EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), the EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee’s December 14, 2007 submittal.

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, the EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants, for example because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.⁷

The EPA notes that interpretation of section 110(a)(2) is also necessary when the EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, the EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the "applicable requirements" of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example

⁷ For example, implementation of the 1997 PM_{2.5} NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), the EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, the EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, the EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, the EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.⁸ The EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).⁹ The EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, the EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of

⁸ The EPA notes, however, that nothing in the CAA requires the EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not the EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

⁹ “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),” Memorandum from Stephen D. Page, September 13, 2013.

promulgation of a new or revised NAAQS. The EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.¹⁰ The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, the EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, the EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, the EPA reviews infrastructure SIP submissions to ensure that the state's SIP appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains the EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.*, whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in the EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state

¹⁰ The EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). The EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City*, 696 F.3d7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, the EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether the EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

satisfy the provisions of section 128.

As another example, the EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and the EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and NSR pollutants, including greenhouse gases. By contrast, structural PSD program requirements do not include provisions that are not required under the EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 PM_{2.5} NAAQS. Accordingly, the latter optional provisions are types of provisions the EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, the EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia*, the requirement that states have a program to regulate minor new sources. Thus, the EPA evaluates whether the state has an EPA-approved minor new source review program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, the EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.*, already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, the EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address

possible deficiencies in a state's existing SIP. These issues include: (i) existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and the EPA's policies addressing such excess emissions ("SSM"); (ii) existing provisions related to "director's variance" or "director's discretion" that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by the EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of the EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007). Thus, the EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.¹¹ It is important to note that the EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

The EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. The EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and the EPA regulations merely for purposes of assuring

¹¹ By contrast, the EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then the EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of “implementation, maintenance, and enforcement” of a new or revised NAAQS when the EPA evaluates adequacy of the infrastructure SIP submission. The EPA believes that a better approach is for states and the EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, the EPA’s 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, the EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes the EPA to issue a “SIP call” whenever the EPA determines that a state’s SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to

otherwise comply with the CAA.¹² Section 110(k)(6) authorizes the EPA to correct errors in past actions, such as past approvals of SIP submissions.¹³ Significantly, the EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude the EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, the EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.¹⁴

IV. Analysis of the Idaho Submittals

110(a)(2)(A): Emission limits and other control measures

CAA section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the CAA.

State submittals: The Idaho submittals cite an overview of the Idaho air quality laws and

¹² For example, the EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See "Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions," 74 FR 21639 (April 18, 2011).

¹³ The EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule," 75 FR 82536 (December 30, 2010). The EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

¹⁴ See, e.g., the EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (Jan. 26, 2011) (final disapproval of such provisions).

regulations, including portions of the Idaho Environmental Protection and Health Act (EPHA) and the Rules for the Control of Air Pollution located at IDAPA 58.01.01. Relevant laws cited include Idaho Code Section 39-105(3)(d) which provides Idaho DEQ authority to supervise and administer a system to safeguard air quality, and Idaho Code Section 39-115 which provides Idaho DEQ with specific authority for the issuance of air quality permits. Relevant regulations include IDAPA 58.01.01.107.03 (incorporation by reference of federal regulations), IDAPA 58.01.01.200 – 228 (permit to construct rules), IDAPA 58.01.01.400 – 410 (operating permit rules), IDAPA 58.01.01.600 – 624 (control of open burning), IDAPA 58.01.01.625 (visible emissions requirements and testing), IDAPA 58.01.01.725 (rules for sulfur content of fuels), and IDAPA 58.01.01.460 – 461 (banking of emissions).

EPA analysis: The Idaho SIP incorporates by reference a number of Federal regulations, including the Federal NAAQS at 40 CFR part 50, revised as of July 1, 2012. The EPA most recently approved the incorporation by reference of these regulations at IDAPA 58.01.01.107 “Incorporations by Reference” on March 3, 2014 (79 FR 11711). Idaho has incorporated by reference the 2010 NO₂ and 2010 SO₂ NAAQS into Idaho regulations.

Idaho generally regulates emissions of NO₂ and SO₂ through its SIP-approved NSR permitting programs, in addition to operating permit regulations, sulfur content of fuels regulations, and rules for the control of open burning, fugitive dust, activities that generate visible emissions, and emissions banking. The EPA most recently approved revisions to Idaho’s major and minor NSR permitting programs on March 3, 2014 (79 FR 11711). Idaho’s NSR rules incorporate by reference the Federal non-attainment NSR regulations and Federal PSD regulations at IDAPA 58.01.204 and IDAPA 58.01.01.205 respectively. In addition to NSR

permitting regulations, Idaho's Tier II operating permit regulations at IDAPA 58.01.01.400 - 410 require that to obtain an operating permit, the applicant must demonstrate the source will not cause or significantly contribute to a violation of any ambient air quality standard. IDAPA 58.01.01.401.03 provides that Idaho DEQ will require a Tier II source operating permit if Idaho DEQ determines emission rate reductions are necessary to attain or maintain any ambient air quality standard or applicable PSD increment.

In addition to the permitting rules described above, Idaho has adopted rules to limit and control emissions resulting from open burning (IDAPA 58.01.01.600 – 624) and activities that generate visible emissions (IDAPA 58.01.01.625). Idaho has also promulgated rules addressing the sulfur content of fuels (IDAPA 58.01.01.725) and banking of emissions (IDAPA 58.01.01.460 – 461). Based on the above analysis, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(A) for the 2010 NO₂ and 2010 SO₂ NAAQS.

We note that, in this action, we are not proposing to approve or disapprove any existing Idaho provisions with regard to excess emissions during startup, shutdown, or malfunction (SSM) of operations at a facility. The EPA believes that a number of states may have SSM provisions that are contrary to the CAA and existing EPA guidance¹⁵ and the EPA has recently proposed action to address such state regulations.

In addition, we are not proposing to approve or disapprove any existing Idaho rules with

¹⁵ For further description of the EPA's SSM Policy, *see, e.g.*, a memorandum dated September 20, 1999, titled "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown," from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation. Also, the EPA issued a proposed action on February 12, 2013, titled "State Implementation Plans: Response to Petition for Rulemaking: Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to excess Emissions During Periods of Startup, Shutdown and Malfunction." This rulemaking responds to a petition for rulemaking filed by the Sierra Club that concerns SSM provisions in 39 states' SIPs (February 22, 2013, 78 FR 12460).

regard to director's discretion or variance provisions. The EPA believes that a number of states may have such provisions that are contrary to the CAA and existing EPA guidance (November 24, 1987, 52 FR 45109), and the EPA plans to take action in the future to address such state regulations. In the meantime, we encourage any state having a director's discretion or variance provision that is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

110(a)(2)(B): Ambient air quality monitoring/data system

CAA section 110(a)(2)(B) requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to the EPA upon request.

State submittals: The Idaho submittals reference IDAPA 58.01.01.107 and IDAPA 58.01.01.576.05 in response to this requirement. These rules incorporate by reference 40 CFR part 50 National Primary and Secondary Air Quality Standards, 40 CFR part 52 Approval and Promulgation of Implementation Plans, 40 CFR part 53 Ambient Air Monitoring Reference and Equivalent Methods, and 40 CFR part 58 Appendix B Ambient Air Quality Surveillance Quality Assurance Requirements for Prevention of Significant Deterioration. The Idaho submittals certify that under these rules Idaho meets the infrastructure requirement to implement ambient air monitoring surveillance systems in accordance with the requirements of the CAA.

The Idaho submittals reference the 2012 Idaho Annual Ambient Air Monitoring Network Plan, approved by the EPA on October 25, 2012. The Idaho submittals also reference the website where the Idaho DEQ provides the network plan, air quality monitoring summaries, a map of the monitoring network and real-time air monitoring data.

EPA analysis: A comprehensive air quality monitoring plan, intended to meet the requirements of 40 CFR part 58 was submitted by Idaho on January 15, 1980 (40 CFR 52.670) and approved by the EPA on July 28, 1982. This air quality monitoring plan has been subsequently updated and most recently approved by the EPA on March 10, 2014.¹⁶ The plan includes, among other things, the locations for NO₂ and SO₂ monitoring. Idaho makes the plan available for public review on the Idaho DEQ website at <http://www.deq.idaho.gov/air-quality/monitoring/monitoring-network.aspx>. The website also includes an interactive map of Idaho's air monitoring network. Based on the foregoing, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(B) for the 2010 NO₂ and 2010 SO₂ NAAQS.

110(a)(2)(C): Program for enforcement of control measures

CAA section 110(a)(2)(C) requires states have a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources, including a program to meet PSD and nonattainment NSR requirements.

State submittals: The Idaho submittals refer to Idaho Code Section 39-108 which provides Idaho DEQ with authority to enforce both administratively and civilly the Idaho Environmental Protection and Health Act (EPHA), or any rule, permit or order promulgated pursuant to the EPHA. Criminal enforcement is authorized at Idaho Code Section 39-109. Emergency order authority, similar to that under section 303 of the CAA, is located at Idaho Code Section 39-112. The Idaho submittals also refer to laws and regulations related to air quality permits at IDAPA 58.01.01.200 – 228 (permit to construct rules).

The Idaho submittals also cite the annual incorporation by reference (IBR) rulemaking

¹⁶ Idaho Air Quality Monitoring Network Plan Approval Letter, dated March 10, 2014.

which updates Idaho's SIP to include Federal changes to the NAAQS and PSD program. Idaho's submittals certify that the annual IBR updates along with IDAPA sections 200 – 288 (permitting requirements for new and modified sources) and 575 – 587 (air quality standards and area classification) meets the CAA infrastructure requirement to implement the PSD program.

EPA analysis: With regard to the requirement to have a program providing for enforcement of all SIP measures, we are proposing to find that the Idaho provisions described above provide Idaho DEQ with authority to enforce the Idaho EPHA, air quality regulations, permits, and orders promulgated pursuant to the EPHA. Idaho DEQ staffs and maintains an enforcement program to ensure compliance with SIP requirements. Idaho DEQ may issue emergency orders to reduce or discontinue emission of air contaminants where air emissions cause or contribute to imminent and substantial endangerment. Enforcement cases may be referred to the State Attorney General's Office for civil or criminal enforcement. Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(C) related to enforcement for the 2010 NO₂ and 2010 SO₂ NAAQS.

To generally meet the requirements of CAA section 110(a)(2)(C) with regard to the regulation of construction of new or modified stationary sources, a state is required to have PSD, nonattainment NSR, and minor NSR permitting programs adequate to implement the 2010 NO₂ NAAQS. As noted above, this action does not address CAA section 110(a)(2)(C) with respect to nonattainment new source review (NSR).

We most recently approved revisions to Idaho's PSD program on March 3, 2014, updating the Idaho PSD program with respect to Federal requirements for fine particulate matter implementation in attainment and unclassifiable areas (79 FR 11711). Previously on July 17,

2012, we approved a revision to the Idaho SIP to provide authority to implement the PSD permitting program with respect to greenhouse gas emissions (77 FR 41916). Idaho's PSD program implements the 2010 NO₂ and 2010 SO₂ NAAQS and incorporates by reference the Federal PSD program requirements at 40 CFR 52.21 as of July 1, 2012. As a result, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(C) with regards to PSD for the 2010 NO₂ and 2010 SO₂ NAAQS.

We note that on January 4, 2013, the U.S. Court of Appeals in the District of Columbia, in *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (DC Cir.), issued a judgment that remanded two of the EPA's rules implementing the 1997 fine particulate matter NAAQS, including the "Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})," (73 FR 28321, May 16, 2008) (2008 PM_{2.5} NSR Implementation Rule). The Court ordered the EPA to "repromulgate these rules pursuant to subpart 4 consistent with this opinion." *Id.* at 437. Subpart 4 of part D, title I of the CAA establishes additional provisions for particulate matter nonattainment areas. The 2008 PM_{2.5} NSR Implementation Rule addressed by the court's decision promulgated NSR requirements for implementation of PM_{2.5} in both nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). As the requirements of subpart 4 only pertain to nonattainment areas, the EPA does not consider the portions of the 2008 PM_{2.5} NSR Implementation Rule that address requirements for PM_{2.5} attainment and unclassifiable areas to be affected by the court's opinion. Moreover, the EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 PM_{2.5} NSR Implementation Rule in order to comply with the Court's decision. Accordingly, the EPA's proposed approval of elements 110(a)(2)(C),

(D)(i)(II), and (J), with respect to the PSD requirements, does not conflict with the court's opinion. The EPA interprets the CAA section 110(a)(1) and (2) infrastructure submittals due three years after adoption or revision of a NAAQS to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which are due by the dates statutorily prescribed under subparts 2 through 5 under part D, extending as far as ten years following designations for some elements.

On January 22, 2013, the U.S. Court of Appeals for the District of Columbia, in *Sierra Club v. EPA*, 703 F.3d 458 (D.C. Cir. 2013), issued a judgment that, inter alia, vacated the provisions adding the PM_{2.5} Significant Monitoring Concentration (SMC) to the Federal regulations at 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c). as part of the Federal "Prevention of Significant Deterioration (PSD) for Particulate Matter Less than 2.5 Micrometers (PM_{2.5}) – Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC); Final Rule" (2010 PSD PM_{2.5} Implementation Rule) (75 FR 64864). In its decision, the court held that the EPA did not have the authority to use SMCs to exempt permit applicants from the statutory requirement in section 165(e)(2) of the CAA that ambient monitoring data for PM_{2.5} be included in all PSD permit applications. Thus, although the PM_{2.5} SMC was not a required element of a state's PSD program, where a state PSD program contains such a provision and allows issuance of new permits without requiring ambient PM_{2.5} monitoring data, such application of the vacated SMC would be inconsistent with the court's opinion and the requirements of section 165(e)(2) of the CAA.

At the EPA's request, the decision also vacated and remanded to the EPA for further

consideration the portions of the 2010 PSD PM_{2.5} Implementation Rule that revised 40 CFR 51.166 and 40 CFR 52.21 related to SILs for PM_{2.5}. The EPA requested this vacatur and remand of two of the three provisions in the EPA regulations that contain SILs for PM_{2.5} because the wording of these two SIL provisions (40 CFR 51.166(k)(2) and 40 CFR 52.21(k)(2)) is inconsistent with the explanation of when and how SILs should be used by permitting authorities that we provided in the preamble to the Federal Register publication when we promulgated these provisions. The third SIL provision (40 CFR 51.165(b)(2)) was not vacated and remains in effect. We also note that the court's decision does not affect the PSD increments for PM_{2.5} promulgated as part of the 2010 PSD PM_{2.5} Implementation Rule.

The EPA recently amended its regulations to remove the vacated PM_{2.5} SILs and SMC provisions from the PSD regulations (December 9, 2013, 78 FR 73698). The EPA will initiate a separate rulemaking regarding the PM_{2.5} SILs that will address the court's remand. In our previous action on March 3, 2014, we disapproved Idaho's incorporation by reference of the vacated PM_{2.5} SILs and SMC provisions into the Idaho SIP (79 FR 11711). This action takes no additional action with respect to those SIP provisions that were previously disapproved. In this action we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(C), (D)(i)(II) and (J) as those elements relate to a comprehensive PSD program.

With regard to the minor NSR requirement of this element, the EPA has determined that Idaho's minor NSR permitting program regulates NO₂ and SO₂ emissions from minor sources. Based on the foregoing, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(C) for the 2010 NO₂ and 2010 SO₂ NAAQS.

110(a)(2)(D): Interstate transport

CAA section 110(a)(2)(D)(i) requires state SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance of the NAAQS in another state (CAA section 110(a)(2)(D)(i)(I)). Further, this section requires state SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration (PSD) of air quality, or from interfering with measures required to protect visibility (i.e. measures to address regional haze) in any state (CAA section 110(a)(2)(D)(i)(II)).

State submittals: The Idaho submittals did not address CAA section 110(a)(2)(D)(i)(I). In accordance with the panel of the U.S. Court of Appeals for the D.C. Circuit opinion, at this time, CAA section 110(a)(2)(D)(i)(I) SIP submissions from the State of Idaho for the 2010 NO₂ and 2010 SO₂ NAAQS are not required SIP submissions. *See EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), *cert granted*, 2013 U.S. Lexis 4801 (2013). Unless the *EME Homer City* decision is reversed or otherwise modified by the Supreme Court, which granted review of the case on June 24, 2013, and heard oral argument on December 10, 2013, states are not required to submit 110(a)(2)(D)(i)(I) SIPs until the EPA has quantified their obligations under that section. The portions of the SIP submissions relating to 110(a)(2)(D)(i)(II) and 110(a)(2)(D)(ii), in contrast, are required.

For purposes of CAA 110(a)(2)(D)(i)(II), the submittals referenced Idaho's SIP-approved PSD program and Idaho's Regional Haze SIP submitted to the EPA on October 25, 2010. CAA section 110(a)(2)(D)(ii) is discussed below.

EPA analysis: The EPA believes that the CAA section 110(a)(2)(D)(i)(II) PSD sub-

element may be met by the State's confirmation in the submittal that new major sources and major modifications in the State are subject to a SIP-approved PSD program. We most recently approved revisions to Idaho's PSD program on March 3, 2014, updating the Idaho PSD program with respect to Federal requirements for fine particulate matter implementation in attainment and unclassifiable areas (79 FR 11711). In addition, on July 17, 2012, we approved a revision to the Idaho SIP to provide authority to implement the PSD permitting program with respect to greenhouse gas emissions (77 FR 41916). Idaho's PSD program implements the 2010 NO₂ and 2010 SO₂ NAAQS and incorporates the Federal PSD program regulations at 40 CFR 52.21 by reference as of July 1, 2012. As discussed above in section 110(a)(2)(C), we believe that our proposed approval of element 110(a)(2)(D)(i)(II) is not affected by recent court vacatur of EPA PSD implementing regulations. Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(D)(i)(II) with regards to PSD for the 2010 NO₂ and 2010 SO₂ NAAQS.

The EPA believes that, with regard to the CAA section 110(a)(2)(D)(i)(II) visibility sub-element, the requirement may be satisfied by an approved SIP addressing regional haze. The Idaho submittals reference the Idaho Regional Haze SIP, submitted to the EPA on October 25, 2010, which addresses visibility impacts across states within the region. On June 9, 2011, we approved a SIP revision which provides Idaho DEQ the authority to address regional haze and to implement best available retrofit technology (BART) requirements (76 FR 33651). Subsequently on June 22, 2011, we approved portions of the Idaho Regional Haze SIP, including the requirements for BART (76 FR 36329). Finally, on November 8, 2012, we approved the remainder of the Idaho Regional Haze SIP, including those portions that address CAA provisions

that require states to set Reasonable Progress Goals for their Class I areas, and to develop a Long Term Strategy to achieve these goals (77 FR 66929).

The EPA is proposing to find that as a result of the prior approval of the Idaho regional haze SIP, the Idaho SIP contains adequate provisions to address 110(a)(2)(D)(i)(II) visibility requirements with respect to the 2010 NO₂ and 2010 SO₂ NAAQS. Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(D)(i)(II) as it applies to visibility for the 2010 NO₂ and 2010 SO₂ NAAQS.

Interstate and international transport provisions: CAA section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with the applicable requirements of CAA sections 126 and 115 (relating to interstate and international pollution abatement). Specifically, CAA section 126(a) requires new or modified major sources to notify neighboring states of potential impacts from the source.

EPA analysis: We most recently approved revisions to the Idaho PSD program on March 3, 2014, updating the Idaho PSD program for fine particulate matter NAAQS implementation in attainment and unclassifiable areas (79 FR 11711). In addition, on July 17, 2012, the EPA approved a revision to the Idaho SIP to provide authority to implement the PSD permitting program with respect to greenhouse gas emissions (77 FR 41916). The Idaho PSD program implements the 2010 NO₂ and 2010 SO₂ NAAQS and incorporates the Federal PSD program regulations at 40 CFR 52.21 by reference as of July 1, 2012. IDAPA 58.01.01.209 (procedures for issuing permits) includes required procedures for issuing permits for new sources, including procedures for public processes, and notice to appropriate Federal, state and local agencies, consistent with the requirements of the Federal PSD program. Idaho issues notice of its draft

permits and neighboring states consistently receive copies of those drafts. Idaho also has no pending obligations under CAA section 115 or 126(b) of the CAA. Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(D)(ii) for the 2010 NO₂ and 2010 SO₂ NAAQS.

110(a)(2)(E): Adequate resources

CAA section 110(a)(2)(E) requires states to provide (i) necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of Federal or state law from carrying out the SIP or portion thereof), (ii) requirements that the state comply with the requirements respecting state boards under section 128 and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the state has responsibility for ensuring adequate implementation of such SIP provision.

State submittals: The Idaho submittals refer to Idaho Code Section 39-106, which gives the Idaho DEQ Director authority to hire personnel to carry out duties of the department. In addition, the submittals reference Idaho Code 39-107, which establishes the State's Board of Environmental Quality, Idaho Code Title 59 Chapter 7 (Ethics in Government Act), and Executive Order 2013-06 which addresses composition requirements of the Idaho Board of Environmental Quality. Finally, the Idaho submittals reference Idaho Code Section 39-129, which authorizes Idaho DEQ to enter into binding agreements with local governments that are enforceable as orders.

EPA analysis: We are proposing to find that the above-referenced provisions provide Idaho DEQ with adequate authority to carry out SIP obligations with respect to the 2010 NO₂

and 2010 SO₂ NAAQS as required by CAA section 110(a)(2)(E)(i). With regard to CAA section 110(a)(2)(E)(ii), we previously approved a revision to the Idaho SIP for purposes of meeting CAA section 128 and CAA section 110(a)(2)(E)(ii) on October 24, 2013 (78 FR 63394).

Finally, we are proposing to find that Idaho has provided necessary assurances that, where Idaho has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, Idaho has responsibility for ensuring adequate implementation of the SIP with regards to the 2010 NO₂ and 2010 SO₂ NAAQS as required by CAA section 110(a)(2)(E)(iii). Therefore we are proposing to approve the Idaho SIP as meeting the requirements of CAA sections 110(a)(2)(E) for the 2010 NO₂ and 2010 SO₂ NAAQS.

110(a)(2)(F): Stationary source monitoring system

CAA section 110(a)(2)(F) requires (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to the CAA, which reports shall be available at reasonable times for public inspection.

State submittals: The Idaho submittals reference the following provisions: IDAPA 58.01.01.157, which includes source testing methods and procedures; IDAPA 58.01.01.121, which outlines Idaho DEQ authority to require monitoring, recordkeeping and periodic reporting related to source compliance; IDAPA 58.01.01.122, which provides Idaho DEQ authority to issue information orders and orders to conduct source emissions monitoring, record keeping, reporting and other requirements; IDAPA 58.01.01.157, which outlines test methods and

procedures for source testing and reporting to the Idaho DEQ; IDAPA 58.01.01.211, which contains conditions for permits to construct; IDAPA 58.01.01.209, which contains procedures for issuing permits to construct, including public processes; IDAPA 58.01.01.404, which contains procedures for issuing Tier II operating permits, including public processes; and Idaho Code 9-342A and IDAPA 58.01.21 which address public records. The Idaho submittals also state that Idaho reports emissions data for the six criteria pollutants to the EPA's National Emissions Inventory, which is updated every three years.

EPA analysis: The provisions cited in the Idaho submittals establish compliance requirements for sources subject to major and minor source permitting to monitor emissions, keep and report records, and collect ambient air monitoring data. The provisions cited also provide Idaho DEQ authority to issue orders to collect additional information as needed for Idaho DEQ to ascertain compliance. In addition, IDAPA 58.01.01.211 (conditions for permits to construct) and 58.01.01.405 (conditions for tier II operating permits) provide Idaho DEQ authority to establish permit conditions requiring instrumentation to monitor and record emissions data, and instrumentation for ambient monitoring to determine the effect emissions from the stationary source or facility may have, or are having, on the air quality in any area affected by the stationary source or facility. This information is made available to the public through public processes outlined at IDAPA 58.01.01.209 (procedures for issuing permits) for permits to construct and 58.01.01.404 (procedures for issuing permits) for Tier II operating permits.

Additionally, the State is required to submit emissions data to the EPA for purposes of the National Emissions Inventory (NEI). The NEI is the EPA's central repository for air

emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through the EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and their associated precursors – nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. The EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the website <http://www.epa.gov/ttn/chief/eiinformation.html>.

Based on the analysis above, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(F) for the 2010 NO₂ and 2010 SO₂ NAAQS.

110(a)(2)(G): Emergency episodes

CAA section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including adequate contingency plans to implement the emergency episode provisions in their SIPs.

State submittals: The Idaho submittals cite Idaho Code 39-112 which provides emergency order authority comparable to that in CAA section 303. In addition, the submittals cite the Idaho Air Pollution Emergency Rules (IDAPA 58.01.01.550 – 562).

EPA analysis: CAA section 303 provides authority to the EPA Administrator to restrain any source from causing or contributing to emissions which present an “imminent and substantial endangerment to public health or welfare, or the environment.” We find that Idaho Code Section 112 provides the Idaho DEQ Director with comparable authority.

The Idaho air pollution emergency rules at IDAPA 58.01.01.550 – 562 were previously

approved by the EPA on January 16, 2003 (68 FR 2217). Idaho's air pollution emergency rules include NO₂ and SO₂, establish stages of episode criteria, provide for public announcement whenever any episode stage has been determined to exist, and specify emission control actions to be taken at each episode stage, consistent with the EPA emergency episode SIP requirements set forth at 40 CFR part 51 subpart H (prevention of air pollution emergency episodes, sections 51.150 through 51.153) for NO₂ and SO₂. Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 2010 NO₂ and 2010 SO₂ NAAQS.

110(a)(2)(H): Future SIP Revisions

CAA section 110(a)(2)(H) requires that SIPs provide for revision of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii), except as provided in paragraph 110(a)(3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the SIP is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements under the CAA.

State submittals: The Idaho submittals refer to Idaho Code Sections 39-105(2) and (3)(d) which provide Idaho DEQ with broad authority to revise rules, in accordance with Idaho administrative procedures for rulemaking, to meet national ambient air quality standards as incorporated by reference in IDAPA 58.01.01.107. The Idaho submittals also refer to IDAPA 58.01.01.575 through 587 which establish and define acceptable ambient concentrations consistent with established criteria.

EPA analysis: We find that Idaho has adequate authority to regularly update the SIP to take into account revisions of the NAAQS and other related regulatory changes. In practice, Idaho regularly updates the SIP for purposes of NAAQS revisions and other related regulatory changes. We most recently approved revisions to the Idaho SIP on March 3, 2014 (79 FR 11711). Idaho has incorporated by reference the 2010 NO₂ and 2010 SO₂ NAAQS into the Idaho SIP. Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(H) for the 2010 NO₂ and 2010 SO₂ NAAQS.

110(a)(2)(I): Nonattainment area plan revision under part D

There are two elements identified in CAA section 110(a)(2) not governed by the three-year submission deadline of CAA section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but are rather due at the time of the nonattainment area plan requirements pursuant to section 172 and the various pollutant specific subparts 2 – 5 of part D. These requirements are: (i) submissions required by CAA section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA, and (ii) submissions required by CAA section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. As a result, this action does not address infrastructure elements related to CAA section 110(a)(2)(C) with respect to nonattainment NSR or CAA section 110(a)(2)(I).

110(a)(2)(J): Consultation with government officials: CAA section 110(a)(2)(J) requires states to provide a process for consultation with local governments and Federal Land Managers carrying out NAAQS implementation requirements pursuant to section 121. CAA section 110(a)(2)(J) further requires states to notify the public if NAAQS are exceeded in an area and to

enhance public awareness of measures that can be taken to prevent exceedances. Lastly, CAA section 110(a)(2)(J) requires states to meet applicable requirements of part C, title I of the CAA related to prevention of significant deterioration and visibility protection.

State submittals: The Idaho submittals refer to laws and regulations relating to public participation processes for SIP revisions and permitting programs. The submittals refer to IDAPA 58.01.01.209 and 404 which provide for public processes related to new source construction permitting and Tier II operating permits. The submittals also refer to Idaho Code Section 39-105(3)(c) which promotes outreach with local governments and Idaho Code Section 39-129 which provides authority for Idaho DEQ to enter into agreements with local governments. In addition, the Idaho submittals reference the Idaho transportation conformity rules and regional haze rules which provide for consultation processes. With regard to public notification, the Idaho submittals state that Idaho DEQ submits information to EPA's AIRNOW program and provides daily air quality index scores for many locations throughout Idaho. Finally, with regards to PSD, the submittals reference the Idaho rules for major source permitting at IDAPA 58.01.01.200 through 223, including PSD requirements for sources in attainment and unclassifiable areas.

EPA analysis: The Idaho SIP includes specific provisions for consulting with local governments and Federal Land Managers as specified in CAA section 121, including the Idaho rules for major source PSD permitting. The EPA most recently approved Idaho permitting rules at IDAPA 58.01.01.209 and 58.01.01.404, which provide opportunity and procedures for public comment and notice to appropriate Federal, state and local agencies, on November 26, 2010 (75 FR 47530). We most recently approved Idaho's rules that define transportation conformity

consultation on April 12, 2001 (66 FR 18873), and Idaho's regional haze rules on June 9, 2011 (76 FR 33651). In practice, Idaho DEQ routinely coordinates with local governments, states, Federal Land Managers and other stakeholders on air quality issues including permitting action, transportation conformity, and regional haze. Therefore, we are proposing to find that the Idaho SIP meets the requirements of CAA section 110(a)(2)(J) for consultation with government officials for the 2010 NO₂ and 2010 SO₂ NAAQS.

CAA section 110(a)(2)(J) also requires the public be notified if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. The EPA calculates an air quality index for five major air pollutants regulated by the CAA: ground-level ozone, particulate matter, carbon monoxide, sulfur dioxide, and nitrogen dioxide. The EPA AIRNOW program provides this air quality index daily to the public, including health effects and actions members of the public can take to reduce air pollution. Idaho actively participates and submits information to the AIRNOW program, in addition to the EPA's Enviroflash Air Quality Alert program. Idaho DEQ also provides the daily air quality index to the public on the DEQ website at <http://www.deq.idaho.gov/air/aqindex.cfm>, as well as measures that can be taken to prevent exceedances. Therefore, we are proposing to find that the Idaho SIP meets the requirements of CAA section 110(a)(2)(J) for public notification for the 2010 NO₂ and 2010 SO₂ NAAQS.

Turning to the requirement in CAA section 110(a)(2)(J) that the SIP meet the applicable requirements of part C of title I of the CAA, we have evaluated this requirement in the context of CAA section 110(a)(2)(C) with respect to permitting. The EPA most recently approved revisions to the State's PSD program on March 3, 2014, updating the Idaho PSD program with

respect to Federal requirements for fine particulate matter implementation in attainment and unclassifiable areas (79 FR 11711). In addition, on July 17, 2012, we approved a revision to the Idaho SIP to provide authority to implement the PSD permitting program with respect to greenhouse gas emissions (77 FR 41916). The State's PSD program implements the 2010 NO₂ and 2010 SO₂ NAAQS and incorporates by reference the Federal PSD program regulations at 40 CFR 52.21 as of July 1, 2012. We believe that our proposed approval of element 110(a)(2)(J) is not affected by recent court vacatur of EPA PSD implementing regulations. Please see our discussion at section 110(a)(2)(C). Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(J) with respect to PSD for the 2010 NO₂ and 2010 SO₂ NAAQS.

With regard to the applicable requirements for visibility protection, the EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the CAA. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus we find that there is no new applicable requirement relating to visibility triggered under CAA section 110(a)(2)(J) when a new NAAQS becomes effective. Based on the above analysis, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(J) for the 2010 NO₂ and 2010 SO₂ NAAQS.

110(a)(2)(K): Air quality and modeling/data

CAA section 110(a)(2)(K) requires that SIPs provide for (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has

established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

State submittals: The Idaho submittals state that air quality modeling is conducted during development of revisions to the SIP, as appropriate for Idaho to demonstrate attainment with required air quality standards. Idaho cites IDAPA 58.01.01.202.02 and IDAPA 58.01.01.402.03 which address permit to construct and Tier II operating permit application procedures and modeling requirements for estimating ambient concentrations, respectively. Modeling is also addressed in Idaho's source permitting process as discussed at section 110(a)(2)(A) above. Estimates of ambient concentrations are based on requirements specified in 40 CFR part 51, Appendix W (Guidelines on Air Quality Models) which is incorporated by reference at IDAPA 58.01.01.107.

EPA analysis: We most recently approved IDAPA 58.01.01.107 (incorporations by reference) on March 3, 2014 (79 FR 11711). This rule incorporates by reference the following EPA regulations: Requirements for Preparation, Adoption, and Submittal of Implementation Plans, 40 CFR part 51; National Primary and Secondary Ambient Air Quality Standards, 40 CFR part 50; Approval and Promulgation of Implementation Plans, 40 CFR part 52; Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR part 53; and Ambient Air Quality Surveillance, 40 CFR part 58 revised as of July 1, 2012. Idaho has incorporated by reference the 2010 NO₂ and 2010 SO₂ NAAQS into Idaho regulations. Idaho models estimates of ambient concentrations based on 40 CFR part 51 Appendix W (Guidelines on Air Quality Models). To cite an example of a SIP supported by substantial modeling, the EPA approved the PM₁₀ Maintenance Plan for Northern Ada County/Boise Idaho Area on October 27, 2003 (68 FR

61106). Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(K) for the 2010 NO₂ and 2010 SO₂ NAAQS.

110(a)(2)(L): Permitting fees

CAA section 110(a)(2)(L) requires SIPs to require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit, until such time as the SIP fee requirement is superseded by the EPA's approval of the state's title V operating permit program.

State submittals: The Idaho submittals refer to IDAPA 58.01.01.387 through 397, which sets the requirements for the annual registration of Tier I (title V) sources and the annual assessment and payment of fees to support the Tier I permitting program. The EPA approved Idaho's title V permitting program on October 4, 2001 (66 FR 50574). The submittals also reference IDAPA 58.01.01.407 through 409 which set the requirements for Tier II operating permit processing fees and usage.

EPA analysis: We approved Idaho's title V program on October 4, 2001 (66 FR 50574) with an effective date of November 5, 2001. While Idaho's operating permit program is not formally approved into the State's SIP, it is a legal mechanism the State can use to ensure that Idaho DEQ has sufficient resources to support the air program, consistent with the requirements of the SIP. Before the EPA can grant full approval, a state must demonstrate the ability to collect adequate fees. Idaho's title V program included a demonstration the State will collect a fee from title V sources above the presumptive minimum in accordance with 40 CFR 70.9(b)(2)(i). Idaho regulations require permitting fees for major sources subject to new source review, as specified at IDAPA 58.01.01.224 through 227. Therefore, we are proposing to conclude that Idaho has

satisfied the requirements of CAA section 110(a)(2)(L) for the 2010 NO₂ and 2010 SO₂ NAAQS.

110(a)(2)(M): Consultation/participation by affected local entities

CAA section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

State submittals: The Idaho submittals reference IDAPA 58.01.01.209, 364 and 404 which provide for the public processes related to developing and issuing air quality permits. In addition, the submittals reference the transportation conformity consultation and public processes at IDAPA 58.01.01.563 through 574. Finally, the submittals reference the consultation and participation process outlined in 40 CFR 51.102, incorporated by reference at IDAPA 58.01.01.107.

EPA analysis: The EPA most recently approved IDAPA 58.01.01.107 (incorporations by reference), which incorporates by reference EPA regulations at 40 CFR part 51 – Requirements for Preparation, Adoption, and Submittal of Implementation Plans on March 3, 2014 (79 FR 11711). In addition, we most recently approved Idaho permitting rules at IDAPA 58.01.01.209 and 58.01.01.404, which provide opportunity and procedures for public comment and notice to appropriate Federal, state and local agencies, on November 26, 2010 (75 FR 47530). Finally, we approved the State rules that define transportation conformity consultation on April 12, 2001 (66 FR 18873). Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(M) for the 2010 NO₂ and 2010 SO₂ NAAQS.

V. Proposed Action

The EPA is proposing to find that the Idaho SIP meets the following CAA section 110(a)(2) infrastructure elements for the 2010 NO₂ and 2010 SO₂ NAAQS: (A), (B), (C),

(D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). This action is being taken under section 110 of the CAA.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves the state's law as meeting Federal requirements and does not impose additional requirements beyond those imposed by the state's law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because the action does not involve technical standards; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in Idaho, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by Reference, Nitrogen dioxide, Ozone, Particulate Matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 27, 2014.

Dennis J. McLerran,
Regional Administrator,
Region 10.

Publication Date: 04/17/2014]